



State of Wisconsin
2011 - 2012 LEGISLATURE



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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2011 ASSEMBLY BILL 582**

March 13, 2012 - Offered by Representative PETRYK.

1 **AN ACT** *to create* 409.109 (4) (n), chapter 420 and 421.202 (11) of the statutes;
2 **relating to:** regulation of rental-purchase agreements and granting
3 rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 409.109 (4) (n) of the statutes is created to read:
5 409.109 (4) (n) Any rental-purchase company that has filed notice as provided
6 under s. 420.02 (1) and any rental-purchase agreement entered into by such a
7 rental-purchase company.

8 **SECTION 2.** Chapter 420 of the statutes is created to read:

9 **CHAPTER 420**

10 **RENTAL-PURCHASE COMPANIES**

11 **420.01 Definitions.** In this chapter:

1 (1) “Cash price” means the price at which a rental-purchase company would
2 sell rental property to the lessee of the rental property if the lessee were to pay for
3 the rental property in full on the date on which the rental-purchase agreement is
4 executed.

5 (2) “Department” means the department of financial institutions.

6 (3) “Rental property” means property rented under a rental-purchase
7 agreement but does not include any motor vehicle, as defined in s. 340.01 (35), or any
8 musical instrument that is intended to be used in whole or in part in an elementary
9 school or high school.

10 (4) “Rental-purchase agreement” means an agreement between a
11 rental-purchase company and a lessee for the use of rental property if all of the
12 following apply:

13 (a) The rental property is to be used primarily for personal, family, or household
14 purposes.

15 (b) The agreement has an initial term of 4 months or less and is renewable with
16 each payment after the initial term.

17 (c) The agreement does not obligate or require the lessee to renew the
18 agreement beyond the initial term.

19 (d) The agreement permits, but does not obligate, the lessee to acquire
20 ownership of the rental property.

21 (5) “Rental-purchase company” means a person engaged in the business of
22 entering into rental-purchase agreements in this state or acquiring rental-purchase
23 agreements that are entered into in this state.

24 **420.02 Notice to the department.** (1) NOTICE. (a) Except as provided in
25 par. (b), a rental-purchase company shall file notice with the department, in the form

1 and manner prescribed by the department, within 30 days after commencing
2 business in this state. A separate notice is required for each place of business
3 maintained by the rental-purchase company.

4 (b) A rental-purchase company that generates less than 75 percent of its total
5 revenues in this state from transactions involving rental-purchase agreements may
6 elect not to file notice with the department under par. (a) and, upon informing the
7 department of this election in a manner prescribed by the department, shall not be
8 governed by the provisions of this chapter.

9 (2) FEE. For each location for which a notice is filed under sub. (1), the
10 rental-purchase company shall pay to the department an annual fee of \$1,000. If a
11 rental-purchase company fails to timely pay the annual fee, the department shall
12 order the rental-purchase company to cease operating until the annual fee is paid.

13 **420.03 General requirements of disclosure. (1) FORM, LOCATION, SIZE, AND**
14 **TIME OF DISCLOSURE.** The information that is required to be disclosed under s. 420.04
15 shall satisfy all of the following:

16 (a) The information shall be clearly and conspicuously disclosed.

17 (b) The information shall be disclosed in writing.

18 (c) The information shall be disclosed in the rental-purchase agreement above
19 the line for the lessee's signature. Multiple pages or backs of pages may be used as
20 long as the face of the rental-purchase agreement is signed by the lessee and other
21 pages are signed or initialed by the lessee.

22 (d) Except as provided in par. (f), the information shall be disclosed in not less
23 than 8-point standard type.

24 (e) The information shall be disclosed before the time that the lessee becomes
25 legally obligated under the rental-purchase agreement.

1 (f) The disclosures required by s. 420.04 (2), (3), (4), and (7) shall be printed in
2 at least 10-point boldface type on the face of the rental-purchase agreement, and
3 shall be grouped together in a box, in the form and order prescribed by the
4 administrator.

5 (2) ACCURACY OF DISCLOSURE. The information required under s. 420.04 must
6 be accurate as of the time that it is disclosed to the lessee. If any information
7 subsequently becomes inaccurate as a result of any act, occurrence, or agreement by
8 the lessee, the resulting inaccuracy is not a violation of any provision of this chapter
9 relating to rental-purchase agreements.

10 (3) COPY OF RENTAL-PURCHASE AGREEMENT. The rental-purchase company shall
11 provide the lessee with a copy of the completed rental-purchase agreement signed
12 by the lessee. If more than one lessee is legally obligated under the same
13 rental-purchase agreement, delivery of a copy of the completed rental-purchase
14 agreement to one of the lessees shall satisfy this subsection.

15 **420.04 Required provisions of rental-purchase agreement.** A
16 rental-purchase company shall include all of the following information, to the extent
17 applicable, in every rental-purchase agreement:

18 (1) DESCRIPTION. A brief description of the rental property, sufficient to identify
19 the rental property to the lessee and the rental-purchase company, including any
20 identification number, and a statement indicating whether the rental property is
21 new or used. A statement that new rental property is used shall not be a violation
22 of this subchapter.

23 (2) CASH PRICE. The cash price of the rental property.

24 (3) RENTAL PAYMENTS TO ACQUIRE OWNERSHIP. The total number, total dollar
25 amount, and timing of all rental payments necessary to acquire ownership of the

1 rental property, excluding any applicable taxes, application or processing charge,
2 delivery fee, liability damage waiver fee, and fees for optional services.

3 **(4) COST OF RENTAL SERVICES.** The difference between the total dollar amount
4 of payments necessary to acquire ownership of the rental property disclosed under
5 sub. (3) and the cash price of the property disclosed under sub. (2). The
6 rental-purchase company shall also include a statement substantially similar to the
7 following: “The cost of rental services is the amount you will pay in addition to the
8 cash price if you acquire ownership of the rented goods by making all payments
9 necessary to acquire ownership.”

10 **(5) PERIODIC PAYMENT.** The rental payment and any applicable taxes and fees
11 for optional services to which the lessee agrees.

12 **(6) UP-FRONT PAYMENT.** The total amount of the initial payment to be made by
13 the lessee at the time that the agreement is executed or the rental property is
14 delivered, including the initial rental payment, any application or processing charge,
15 any delivery fee, and fees for other optional services to which the lessee agrees.

16 **(7) TOTAL PAYMENTS TO ACQUIRE OWNERSHIP.** The total of all charges to be paid
17 by the lessee to acquire ownership of the rental property, which shall consist of the
18 total dollar amount of all rental payments disclosed under sub. (3), and the total
19 dollar amount of all required fees and taxes.

20 **(8) OTHER CHARGES.** An itemized description of any other charges or fees that
21 the rental-purchase company may charge upon the occurrence of a contingency
22 specified in the rental-purchase agreement, such as late fees.

23 **(9) SUMMARY OF EARLY-PURCHASE OPTION.** A statement summarizing the terms
24 of the lessee’s options to acquire ownership of the rental property as provided in s.
25 420.06 (3).

1 **(10) RESPONSIBILITY FOR THEFT OR DAMAGE.** A statement that, unless otherwise
2 agreed, the lessee is responsible for the fair market value of the rental property,
3 determined according to the early-purchase option formula under sub. (9), if the
4 rental property is stolen, damaged, or destroyed while in the possession of or subject
5 to the control of the lessee. The statement shall indicate that the fair market value
6 will be determined as of the date on which the rental property is stolen, damaged,
7 or destroyed.

8 **(11) SERVICE AND WARRANTY.** A statement that during the term of the rental-
9 purchase agreement, the rental-purchase company is required to service the rental
10 property and maintain it in good working condition, as long as no other person has
11 serviced the rental property. In lieu of servicing the rental property, the
12 rental-purchase company may, at its option, replace the rental property with
13 substitute property of comparable quality and condition. The rental-purchase
14 company's obligation to provide service is limited to defects in the property not
15 caused by improper use or neglect by the lessee or harmful conditions outside the
16 control of the rental-purchase company or manufacturer.

17 **(12) TERMINATION AT OPTION OF LESSEE.** A statement that the lessee may
18 terminate the agreement at any time without penalty by voluntarily surrendering
19 or returning the rental property in good repair.

20 **(13) RIGHT TO REINSTATE.** A brief explanation of the lessee's right to reinstate
21 a rental-purchase agreement under s. 420.07.

22 **(14) RENTAL, NOT PURCHASE.** A statement reading substantially as follows: "You
23 are renting this property. You will not own the property until you make all payments
24 necessary to acquire ownership or until you exercise your early-purchase option. If

1 you do not make your payments as scheduled or exercise your early-purchase option,
2 the rental-purchase company may repossess the property.”

3 **(15) INFORMATION ABOUT RENTAL-PURCHASE COMPANY AND LESSEE.** The names of
4 the rental-purchase company and the lessee, the rental-purchase company’s
5 business address and telephone number, the lessee’s address, and the date on which
6 the rental-purchase agreement is executed.

7 **(16) OPTIONAL SERVICES.** Space for a specific, separately signed or initialed,
8 affirmative, written indication of the lessee’s desire for any optional service for which
9 a charge is assessed. The lessee’s request must be obtained after a written disclosure
10 of the cost of the optional service is made, and the disclosure of the cost and purpose
11 of such service must be listed at or near the affirmation space. This requirement is
12 satisfied by a separate written agreement for an optional service that meets the
13 requirements of this subsection.

14 **420.05 Prohibited provisions of rental-purchase agreements.** A
15 rental-purchase agreement may not contain any of the following:

16 **(1) CONFESSION.** A confession of judgment.

17 **(2) REPOSSESSION.** A provision authorizing a rental-purchase company, or an
18 agent of the rental-purchase company, to enter the lessee’s residence without the
19 lessee’s permission, or to commit a breach of the peace in the repossession of rental
20 property provided by the rental-purchase company under the rental-purchase
21 agreement.

22 **(3) WAIVER.** A waiver of a defense or counterclaim, a waiver of any right to
23 assert any claim that the lessee may have against the rental-purchase company or
24 an agent of the rental-purchase company, or a waiver of any provision of this chapter
25 relating to rental-purchase agreements.

1 **(4) OVERPAYMENT.** A provision requiring rental payments totaling more than
2 the total dollar amount of all rental payments necessary to acquire ownership, as
3 disclosed in the rental-purchase agreement.

4 **(5) INSURANCE.** A provision requiring the lessee to purchase insurance from the
5 rental-purchase company to insure the rental property.

6 **(6) ATTORNEY FEES.** A provision requiring the lessee to pay any attorney fees.

7 **420.06 Price and cost limitations. (1) LIMITS ON CASH PRICES.** The cash price
8 for rental property offered by a rental-purchase company may not exceed the greater
9 of the following:

10 (a) An amount equal to twice the actual purchase price of the rental property,
11 including any applicable freight charges, paid by the rental-purchase company.

12 (b) The price at which property of like type and quality is offered, in the
13 ordinary course of business, for sale for cash in the market area of the
14 rental-purchase store where the property is offered for rental purchase.

15 **(2) LIMITS ON COST OF RENTAL SERVICES AND OTHER CHARGES.** The total amount
16 charged by the rental-purchase company for all required charges or fees, excluding
17 applicable taxes and any late fees or reinstatement fees, in a rental-purchase
18 transaction shall not exceed twice the maximum cash price of the property as
19 determined under sub. (1).

20 **(3) ACQUISITION OF OWNERSHIP.** At any time after the initial rental period under
21 a rental-purchase agreement, if a lessee affirmatively elects an early-purchase
22 option, the lessee may acquire ownership of the rental property by tendering an
23 amount not to exceed 55 percent of the difference between the total of rental
24 payments necessary to acquire ownership of the rental property and the total
25 amount of rental payments paid for use of the rental property at that time, plus

1 applicable taxes, except that the lessee's early-purchase option amount may not be
2 less than the amount of one rental payment. Before a lessee acquires ownership of
3 the rental property as provided under this subsection, a rental-purchase company
4 may first require the lessee to pay any accrued unpaid rental payments and fees.

5 (4) ANNUAL PERCENTAGE RATE DISCLOSURE NOT REQUIRED. A rental-purchase
6 company shall not be required to disclose, in a rental-purchase agreement or
7 otherwise, any percentage rate calculation, including a time-price differential, an
8 annual percentage rate, or an effective annual percentage rate.

9 **420.07 Reinstatement of a rental-purchase agreement. (1)**

10 REINSTATEMENT GENERALLY. Subject to sub. (2), a lessee may reinstate a
11 rental-purchase agreement that has ended without losing any rights or options
12 previously acquired if all of the following apply:

13 (a) The lessee voluntarily returned or surrendered the rental property within
14 7 days after the expiration of the rental-purchase agreement.

15 (b) Not more than 120 days have passed after the date on which the
16 rental-purchase agreement ended.

17 (2) AUTHORIZED CONDITIONS ON REINSTATEMENT. As a condition of reinstatement
18 under sub. (1), the rental-purchase company may require the payment of all
19 past-due rental charges, any applicable late fees, a reinstatement fee not to exceed
20 \$5, and the rental payment for the next term.

21 (3) EFFECT OF REPOSSESSION ON REINSTATEMENT. Subject to s. 420.05 (2), nothing
22 in this section prohibits a rental-purchase company from repossessing or attempting
23 to repossess rental property when a rental-purchase agreement ends, but such
24 efforts do not affect the lessee's right to reinstate as long as the rental property is

1 voluntarily returned or surrendered within 7 days after the rental-purchase
2 agreement ends.

3 (4) PROPERTY AVAILABLE UPON REINSTATEMENT. Upon reinstatement, the
4 rental-purchase company shall provide the lessee with the same rental property, if
5 the property is available and is in the same condition as when it was returned to the
6 rental-purchase company, or with substitute property of comparable quality and
7 condition.

8 (5) NOTICE OF REINSTATEMENT RIGHTS. If the lessee is entitled to reinstatement
9 under subs. (1) and (2), within 15 days of repossession or voluntary return or
10 surrender of the rental property, the rental-purchase company shall provide written
11 notice to the lessee of the lessee's rights and obligations under this section.

12 **420.08 Receipts and statements. (1) RECEIPTS.** A rental-purchase company
13 shall provide a written receipt to the lessee for any payment made by the lessee in
14 cash or, upon the request of the lessee, for any other type of payment.

15 (2) STATEMENT DUE TO LESSEE. Subject to sub. (4), upon the request of a lessee,
16 a rental-purchase company shall provide a written statement to the lessee showing
17 the lessee's payment history on each rental-purchase agreement between the lessee
18 and the rental-purchase company. A rental-purchase company is not required to
19 provide a statement covering any rental-purchase agreement that ended more than
20 one year prior to the date of the lessee's request. A rental-purchase company may
21 provide a single statement covering all rental-purchase agreements or separate
22 statements for each rental-purchase agreement, at the rental-purchase company's
23 option.

24 (3) STATEMENT DUE TO OTHER PARTIES. Subject to sub. (4), upon the written
25 request of a lessee, made during the term of or no later than one year after the

1 rental-purchase agreement ended, a rental-purchase company shall provide a
2 written statement to any person the lessee designates, showing the lessee's payment
3 history under the rental-purchase agreement.

4 (4) FEE FOR STATEMENT. A lessee or, if appropriate, a lessee's designee, is entitled
5 to receive one statement under subs. (2) and (3) without charge once every 12
6 months. A rental-purchase company shall provide an additional statement if the
7 lessee pays the rental-purchase company's reasonable costs of preparing and
8 furnishing the statement.

9 **420.09 Advertising disclosure required.** If an advertisement for a
10 rental-purchase agreement states the amount of a payment for a specific item of
11 property, the advertisement shall also clearly and conspicuously state all of the
12 following:

13 (1) That the transaction advertised is a rental-purchase agreement.

14 (2) The total number and total dollar amount of all rental payments necessary
15 to acquire ownership of the property.

16 (3) That the lessee does not acquire ownership of the property if the lessee fails
17 to make all payments necessary to acquire ownership of the property.

18 **420.10 Price cards displayed.** (1) PRICE CARDS GENERALLY. Except as
19 provided in sub. (2), a card or tag that clearly and conspicuously states all of the
20 following shall be displayed on or next to any property displayed or offered by a
21 rental-purchase company for rent under a rental-purchase agreement:

22 (a) The cash price that a lessee would pay to purchase the property.

23 (b) The amount and timing of the rental payments.

24 (c) The total number and total amount of all rental payments necessary to
25 acquire ownership of the property under a rental-purchase agreement.

1 (d) The cost of rental services under a rental-purchase agreement.

2 (e) Whether the property is new or used.

3 **(2) EXCEPTIONS.** If property is offered for rent under a rental-purchase
4 agreement through a catalog, whether print or electronic, or if the size of the property
5 is such that displaying a card or tag on or next to the property would be impractical,
6 a rental-purchase company may make the disclosures required under sub. (1) in a
7 catalog, list, or disclosure sheet if the catalog, list, or disclosure sheet is readily
8 available to prospective lessees and provided upon request.

9 **420.11 Rule making.** The department may promulgate rules to administer
10 and enforce the requirements of this chapter.

11 **420.12 Penalties. (1) AWARD OF DAMAGES.** Subject to sub. (3), a
12 rental-purchase company that violates any provision of this chapter, rule
13 promulgated under this chapter, or order issued under this chapter pertaining to a
14 lessee is liable to the lessee in an amount equal to the greater of the following:

15 (a) The actual damages sustained by the lessee as a result of the violation.

16 (b) If the action is not brought as a class action, 25 percent of the total payments
17 necessary for the lessee to acquire ownership of the rental property, but not less than
18 \$100 nor more than \$1,000.

19 (c) If the action is brought as a class action, the amount the court determines
20 to be appropriate, subject to sub. (2).

21 **(2) DAMAGE LIMITATIONS IN CLASS ACTIONS.** The total recovery by all lessees in
22 any class action or series of class actions arising out of the same violation may not
23 be more than the lesser of \$500,000 or 1 percent of the net worth of the
24 rental-purchase company. In determining the amount of any award in a class action,
25 the court shall consider, among other relevant factors, the amount of actual damages

1 awarded, the frequency and persistence of the violation, the rental-purchase
2 company's resources, and the extent to which the rental-purchase company's
3 violation was intentional.

4 **(3) UNINTENTIONAL VIOLATIONS.** A rental-purchase company is not liable for any
5 violation of this chapter if the rental-purchase company shows by a preponderance
6 of the evidence that the violation was not intentional and resulted from a bona fide
7 error, and the rental-purchase company maintained procedures reasonably adapted
8 to avoid such an error.

9 **(4) COSTS AND ATTORNEY FEES.** If a court awards any monetary amount under
10 sub. (1) to a lessee, the rental-purchase company shall also be liable to the lessee for
11 the costs of the action and, notwithstanding s. 814.04 (1), for reasonable attorney fees
12 as determined by the court.

13 **420.13 Inapplicability of Consumer Act and ch. 409.** A rental-purchase
14 company that has filed notice as provided under s. 420.02 (1) is not subject to the
15 Wisconsin consumer act, chs. 421 to 427, or any related rule or order adopted under
16 chs. 421 to 427, or to any provision of ch. 409, and any rental-purchase agreement
17 entered into by such a rental-purchase company may not be construed or regulated
18 as a security interest, credit sale, retail installment sale, conditional sale, or any
19 other form of consumer credit, nor considered to be the creation of a debt or extension
20 of credit.

21 **SECTION 3.** 421.202 (11) of the statutes is created to read:

22 421.202 (11) Any rental-purchase company that has filed notice as provided
23 under s. 420.02 (1) and any rental-purchase agreement entered into by a such a
24 rental-purchase company.

25 **SECTION 4. Initial applicability.**

